

§ 4.271

the deceased that are under his control, or from the proceeds of a sale of the property or a part thereof.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

§ 4.271 Summary distribution.

When an Indian dies intestate leaving only trust personal property or cash of a value of less than \$1,000, the Superintendent shall assemble the apparent heirs and hold an informal hearing to determine the proper distribution thereof. A memorandum covering the hearing shall be retained in the agency files showing the date of death of the decedent, the date of hearing, the persons notified and attending, the amount on hand, and the disposition thereof. In the disposition of such funds, the administrative law judge or Superintendent shall dispose of creditors' claims as provided in § 4.251. The Superintendent shall credit the balance, if any, to the legal heirs.

[36 FR 24814, Dec. 23, 1971]

§ 4.272 Omitted property.

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified either administratively by the Commissioner of the Bureau of Indian Affairs or by a modification order prepared by him for the administrative law judge's approval and signature to include such omitted property for distribution pursuant to the original decision. Copies of such modifications shall be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner of the Bureau of Indian Affairs shall notify the administrative law judge who shall proceed to hold hearings if necessary and shall issue a decision under § 4.240. The record of any such proceeding shall be lodged with the title plant designated under § 4.236(b).

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

43 CFR Subtitle A (10-1-97 Edition)

§ 4.273 Improperly included property.

(a) When subsequent to a decision under § 4.240 or § 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory shall be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The administrative law judge shall review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the administrative law judge shall give notice of his action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the administrative law judge may conduct a hearing at any stage of the modification proceeding. Any such hearing shall be scheduled and conducted in accordance with the rules of this subpart. The administrative law judge shall enter a final decision based on his findings, modifying or refusing to modify the property inventory and his decision shall become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision shall be given in accordance with § 4.240(b).

(d) A party aggrieved by the administrative law judge's decision may appeal to the Board pursuant to the procedures in §§ 4.310 through 4.323.

(e) The record of all proceedings shall be lodged with the title plant designated under § 4.236(b).

[36 FR 24814, Dec. 23, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

§ 4.274 Distribution of estates.

(a) Unless the Superintendent shall have received a petition for rehearing filed pursuant to the requirements of § 4.241(a) or a copy of a notice of appeal filed pursuant to the requirements of § 4.320(b), he shall pay allowed claims, distribute the estate, and take all other necessary action directed by the administrative law judge's final order.

(b) The Superintendent may not pay claims nor make distribution of an estate during the pendency of proceedings under § 4.241 or § 4.242 unless the administrative law judge orders otherwise in writing. The Board may, at any time, authorize the administrative law judge to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24814, Dec. 23, 1971; 55 FR 43133, Oct. 26, 1990]

MISCELLANEOUS

§ 4.281 Claims for attorney fees.

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the administrative law judge. At the administrative law judge's discretion such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees shall be filed prior to the close of the last hearing and shall be supported by such proof as is required by the administrative law judge. In determining attorney fees, consideration shall be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein shall prevent an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

§ 4.282 Guardians for incompetents.

Minors and other legal incompetents who are parties in interest shall be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the administrative law judge.

TRIBAL PURCHASE OF INTERESTS UNDER SPECIAL STATUTES

SOURCE: 45 FR 50331, July 29, 1980, unless otherwise noted.

§ 4.300 Authority and scope.

(a) The rules and procedures set forth in §§ 4.300 through 4.308 apply only to proceedings in Indian probate which relate to the tribal purchase of a decedent's interests in trust and restricted land as provided by:

(1) The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968), with respect to trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951);

(2) The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530), with respect to trust or restricted land within the Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37); and

(3) The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744), with respect to trust or restricted land within the Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).

(b)(1) In the exercise of probate authority, an administrative law judge shall determine: (i) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes; (ii) the entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests which have been purchased by a tribe; and (iii) the fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(2) In the determination under paragraph (b)(1) of this section of the entitlement of a tribe to purchase the interests of an heir or devisee, the issues of: (i) Enrollment or refusal of the tribe to enroll a specific individual and (ii) specification of blood quantum, where pertinent, shall be determined by the official tribal roll which shall be binding upon the administrative law judge. For good cause shown, the administrative law judge may stay the probate proceeding to permit an aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.